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by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. This act may be known and cited as the "Workers' Compensation Reform Act of 1996".

SECTION 2.

(a) There is hereby created a special joint committee of the general assembly on workers' compensation issues composed of seven (7) members of the senate appointed by the speaker of the senate and seven (7) members of the house of representatives appointed by the speaker of the house of representatives.

(b) This committee shall monitor implementation of the Workers' Compensation Reform Act of 1992 and subsequent reforms, and shall study such other programs, initiatives or topics related to the workers' compensation system as the members deem appropriate.

(c) The committee shall report to the governor and general assembly at least annually.

(d) (1) The department of labor and the department of commerce and insurance shall provide the committee with such information as it may require.

(2) The comptroller of the treasury and the state treasurer shall provide staff support to the committee.

(e) The special committee shall terminate on June 30, 2001.

(f) (1) Members of the committee shall be entitled to reimbursement for their expenses in attending meetings of the committee or any subcommittee thereof at the same rates and in the same manner as when attending the general assembly.

(2) The committee shall elect from its membership a chair, a vice chair, and such other officers as it deems necessary.

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SECTION 3. Tennessee Code Annotated, Section 50-6-114, is amended by adding the following language at the end of the section:

However, any employer may set off from temporary total, temporary partial, and permanent partial disability benefits any payment made to an employee under an employer funded disability plan for the same injury, provided that the disability plan permits such an offset. In the event a collective bargaining agreement is in effect, this provision shall be subject to the agreement of both parties.

SECTION 4. Tennessee Code Annotated, Section 50-6-121(a), is amended by deleting the subsection in its entirety and by substituting instead the following as a new subsection (a):

(a) (1) On the effective date of this section, the existing advisory council on workers' compensation is terminated and within sixty (60) days there shall be created an advisory council on workers' compensation. There shall be seven (7) voting members of the council, with three (3) representing employers, three (3) representing employees, and one (1) member, who shall be the chair, selected by the six (6) appointed members. All members shall be knowledgeable concerning the workers' compensation system. The speaker of the house of representatives, the speaker of the senate and the governor, shall each appoint one (1) employer and (1) employee representative to the council. The chair shall have an academic background in research, statistical analysis, insurance, or related fields. The chair shall vote only in event of a tie. At least two (2) of the employer representatives shall be from businesses insured in the commercial insurance market. One (1) employer representative and one (1) employee representative shall be from a small business which is not eligible for experience rating.

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One employer representative may be from a self-insured business. At least one (1) employee representative shall be from organized labor. Representatives, officers and employees from labor organizations or business trade organizations are eligible for appointment. Three (3) of the original appointees shall serve for terms of two (2) years, and three (3) shall serve for terms of four (4) years. The chair shall serve an initial four (4) year term. The governor and the speakers shall each initially appoint one (1) member who shall serve for four (4) years and one (1) member who shall serve for two (2) years. Thereafter, each member shall be appointed for four (4) years.

(2) The governor shall also appoint four (4) nonvoting members of the council: one (1) from local government; one (1) from an insurance company, one (1) health care provider and one (1) attorney. The nonvoting local government representative shall be appointed from a list of three (3) names submitted jointly by the Tennessee Municipal League and the Tennessee County Services Association. The Tennessee Municipal League and the Tennessee County Services Association may alternate recommendations between municipal and county representatives. The governor shall appoint the nonvoting insurance company member from either a list of three (3) names submitted by Alliance of American Insurers or a list of three (3) names submitted by the American Insurance Association. The governor shall appoint the nonvoting health care provider member from a list of three (3) names submitted by the Tennessee Medical Association. The governor shall appoint the nonvoting attorney member from a list of three (3) names submitted by the Tennessee Trial Lawyers Association or from a list of three (3) names submitted by the Tennessee Bar Association. The chair and vice-chair

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of the special joint committee on workers' compensation, the commissioner of labor and the commissioner of commerce and insurance or their designees, shall be ex officio, nonvoting members of the council.

SECTION 5. Tennessee Code Annotated, Section 50-6-121(c), is amended by inserting the following immediately after the second sentence of the subsection:

The council shall make an annual presentation to appropriate standing committees of the general assembly with jurisdiction over workers' compensation issues.

SECTION 6. Tennessee Code Annotated, Section 50-6-121(c), is amended by deleting the language "and" at the end of subdivision (2), deleting the punctuation "." at the end of subdivision (3) and substituting instead the following as new subdivisions (4) and (5):

(4) Developing evaluations, statistical reports, and other information from which the general assembly may evaluate the impact of Public Chapter 900 of the Acts of 1992 and subsequent changes to the workers' compensation system. The council shall report to the general assembly on issues relating to permanent partial disability and the definitions of injury and accident no later than January 15, 1997. The council shall report to the general assembly on the impact of the 1992 reforms no later than January 15, 1997; and

(5) On or before January 15, 2000, the council shall report to the general assembly on issues relating to the assigned risk pool and shall make specific recommendations concerning direct assignment of insurance and a competitive state workers' compensation insurance fund.

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SECTION 7. Tennessee Code Annotated, Section 50-6-121(d), is amended by deleting the subsection in its entirety and by substituting instead:

(d) The council is authorized to retain staff and professional assistance, such as consultants and actuaries, subject to budgetary approval in the general appropriations act. The council shall be administratively attached to the department of labor.

SECTION 8. Tennessee Code Annotated, Section 50-6-122(a), is amended by designating the existing language as subdivision (1) and by adding the following as a new subdivisions (2) and (3):

(2) In order to assure that in workers' compensation cases quality medical care is rendered and to control medical care costs, an employer is authorized to use, but is not required to use, health maintenance organizations (HMO) and preferred provider organizations (PPO). An HMO or PPO may contract with medical care providers as permitted by law. Such contracts are authorized to use, but are not limited to the use of, the following managed care methodologies:

(A) medical bill review;

(B) establishment of medical practice guidelines;

(C) case management, subject to the provisions of § 50-6-123;

(D) utilization review, subject to the provisions of § 50-6-124; and

(E) peer review programs.

(3) The provisions of Section 50-6-204(a)(4), relative to medical care shall apply to any managed care methodology employed pursuant to this section. For the purposes of Section 50-6-204(a)(4), physicians and surgeons in the same health maintenance

organization or preferred provider organization who are not employees of such organization or associated together in a group practice shall not be considered to be associated in practice together.

SECTION 9. Tennessee Code Annotated, Section 50-6-123, is amended by adding the following as a new subsection (e):

(e) The commissioner shall revise the threshold established pursuant to subsection (b) by October 1, 1996, and every year thereafter to reflect changes in the cost of providing medical care and in the manner of rendering such care. The commissioner shall conduct this annual revision in consultation with the advisory council on workers' compensation established by § 50-6-121.

SECTION 10. Tennessee Code Annotated, Section 50-6-122, is amended by adding the following as a new subsection (c):

(c) A health care provider may not pursue a private claim against an employer for all or part of the costs of medical care provided to an employee that are not paid by the employer's workers' compensation insurer.

SECTION 11. Tennessee Code Annotated, Section 50-6-124, is amended by adding the following as a new subsection (f):

(f) The commissioner of labor is directed to review the role of physical therapy services in workers' compensation costs and to determine whether such services should be included in the utilization review system established pursuant to this section. In such review the commissioner shall consult with the medical care and cost containment committee. The commissioner shall conclude such review by January 1, 1997, and

report to the advisory council on workers' compensation and the special joint committee on workers' compensation. If the review determines that physical therapy services merit inclusion in the utilization review system, the commissioner shall include such services by rule in the system.

SECTION 12. Tennessee Code Annotated, Section 50-6-127, is amended by deleting the language of subsections (a), (b), (c), and (d) in their entirety and by substituting instead the language as a new subsection (a) and redesignating subsection (e) as subsection (b):

(a) The commissioner of labor in consultation with the commissioner of commerce and insurance and appropriate law enforcement officials shall implement a public awareness program concerning workers' compensation fraud.

SECTION 13. Tennessee Code Annotated, Section 50-6-203, is amended by adding the following language at the end of the section:

For purposes of this section, the issuing date of the last voluntary payment by the employer, not the date of its receipt, shall constitute the time the employer ceased making payments and an employer or its insurer shall provide such date on request. The running of the one (1) year limitation period is suspended from the date of the initial request for a benefit review conference until thirty (30) days after either a written agreement or a written report is filed with the commissioner pursuant to § 50-6-240. The running of the limitation is also suspended from the date the department of labor receives a proposed settlement under Section 50-6-206(b) until the department approves or rejects such settlement.

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SECTION 14. Tennessee Code Annotated, Section 50-6-206, is amended by deleting the section in its entirety and by substituting instead the following:

(a) The interested parties shall have the right to settle all matters of compensation between themselves, but all settlements, before the same are binding on either party, shall be reduced to writing and shall be approved by the judge of the circuit court or of the chancery court or criminal court of the county where the claim for compensation is entitled to be made. It shall be the duty of the judge of the circuit court or of the chancery court or criminal court to whom any proposed settlement shall be presented for approval under this chapter, to examine the same to determine whether the employee is receiving, substantially, the benefits provided by the Workers' Compensation Law. To this end, such judge may call and examine witnesses. Upon such settlement being approved, judgment shall be rendered thereon by the court and duly entered by the clerk. The cost of the proceeding shall be borne by the employer. Certified copies of all papers, orders, judgments and decrees filed or entered by the court upon the approval of such settlement, together with a copy of the settlement agreement shall be forwarded to the division of workers' compensation by the employer within ten (10) days after the entry of the judgment. If it shall appear that any settlement approved by the court does not secure to the employee in a substantial manner the benefits of the Workers' Compensation Law, the same may, in the discretion of the trial judge, be set aside at any time within thirty (30) days after the receipt of such papers by the division of workers' compensation, upon the application of the employee or the director of the division of workers' compensation in his behalf, whether court has

adjourned in the meantime or not, notwithstanding § 50-6-230 to the contrary. In all cases where such settlement proceedings or any other court proceedings for workers' compensation under this chapter involve a subsequent injury wherein the employee would be entitled to receive or is claiming compensation from the "second injury fund" provided for in § 50-6-208, the director of the division of workers' compensation shall be made a party defendant to such proceedings and a staff attorney of the department of labor under the supervision of the attorney general and reporter shall represent the director in such proceeding and the court by its decree shall determine the right of the claimant to receive compensation from such fund, and the clerk of such court shall furnish to the director of the division of workers' compensation a certified copy of such decree, the cost of which shall be added to the costs of such proceedings and shall be paid as other costs are adjudged in the case.

(b) Notwithstanding any other provision of this section, whenever there is a dispute between the parties as to whether or not a claim is compensable or the amount of compensation due, the parties may settle such matter without regard to whether the employee is receiving substantially the benefits provided by the Workers' Compensation Law; provided, such settlement is approved by a court having jurisdiction of workers' compensation cases and provided further such settlement is found by the court to be for the best interest of the employee.

(c)(1) The commissioner of labor or the commissioner’s designee may approve a proposed settlement among the parties if:

(A) the settlement agreement has been signed by the parties;

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(B) the commissioner or the commissioner's designee has determined that the employee is receiving, substantially, the benefits provided by the Workers' Compensation Law or in cases subject to subsection (b) the best interest of the employee; and

(C) If the employee was not represented by counsel at a benefit review conference, the settlement agreement shall be reviewed by a specialist within the department of labor who was not associated with the employee's case.

(2) Among the parties, a settlement approved by the commissioner pursuant to this subsection shall be entitled to the same standing as a judgment of a court of record for purposes of § 50-6-203 and all other purposes. A settlement approved by the commissioner may be appealed as a final order pursuant to Title 4, Chapter 5.

(3) Any settlement arrived at apart from an action pursuant to § 50-6-225(c) shall be approved pursuant to this subsection.

(4) In cases where the parties agree to a voluntary settlement agreement prior to a benefit review conference, the parties may agree to waive approval of the settlement by the department of labor and may seek the approval of a court pursuant to subsection (a).

(5) In approving settlements pursuant to this subsection the commissioner or the commissioner's designee shall consider all pertinent factors, including degree of medical impairment, the employee's age, education, skills and training, local job opportunities, and capacity to work at types of employment available on the claimant's disabled condition.

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SECTION 15. Tennessee Code Annotated, Section 50-6-208, is amended by adding the following as a new subsection (f):

(f) The commissioner of labor, in consultation with the attorney general and reporter, shall prepare a plan for a pilot project using private legal counsel to defend the director of the division of workers compensation in actions claiming compensation from the "second injury fund" pursuant to Tennessee Code Annotated, Section 50-6-206. Such plan shall include types of cases, approximate numbers of cases, proposed method of selection, and other relevant matters. Any private legal counsel retained for these purposes shall be retained pursuant to Tennessee Code Annotated, Section 8-6-106.

SECTION 16. Tennessee Code Annotated, Section 50-6-225, is amended by adding the following as a new subsection to be appropriately designated:

( ) If on request by the specialist a party fails to produce documents, to cooperate in scheduling a conference, or to provide a representative authorized to settle a matter in attendance at a conference, then a specialist may declare an impasse and file the report on unresolved issues with a court. On the motion of either party or on the court's own motion, a court is authorized , but not required, to hold a hearing on the failure to produce documents requested by the specialist, to cooperate in scheduling, or to provide a representative who possessed settlement authority. If the court determines that such failure lacked good cause or resulted from bad faith, then the court may assess the offending party who failed to take such requested action, with attorneys fees and costs related only to the trial. The commissioner of labor is authorized to

promulgate rules to effectuate the purposes of this subsection in accordance with Title 4, Chapter 5.

SECTION 17. Tennessee Code Annotated, Section 50-6-226(a), is amended by deleting the subsection and by substituting instead the following as a new subsection (a):

(a) (1) The fees of attorneys for services to employees under the Workers' Compensation Law shall be subject to the approval of the commissioner or the court before which the matter is pending, as appropriate; provided, that no attorney's fees to be charged employees shall be in excess of twenty percent (20%) of the amount of the recovery or award to be paid by the party employing the attorney.

(2) (A) Medical costs that have been voluntarily paid by the employer or its insurer shall not be included in determining the award for purposes of calculating the attorney's fee.

(B) For cases submitted to the department for approval pursuant to § 50-6-206(b) which are resolved prior to trial or pursuant to a benefit review conference, the department shall deem the attorneys fee to be reasonable if such fee does not exceed the lesser of twenty percent (20%) of the award to injured worker or ten thousand dollars ($10,000). For fees in excess of ten thousand dollars ($10,000), any court with jurisdiction to hear a matter pursuant to § 50-6-225 shall review such case solely for the purpose of approving such fees as are reasonable.

(C) In cases that proceed to trial, an employee's attorney shall file an application for approval of a proposed attorneys fee. Where the award of an attorney's fee exceeds ten thousand dollars ($10,000), the court shall make specific findings as to the factors

which justify such a fee as provided in DR 2-106 of Rule 8 of the Rules of the Supreme Court.

(D) The final order or settlement in all workers' compensation cases shall set out the attorney portion of the award in both dollar and percentage terms and the required findings.

(3) In accident cases that result in death of an employee, the plaintiff's attorneys fees shall not exceed reasonable payment for actual time and expenses incurred when the employer makes a voluntary settlement offer in writing to dependents or survivors eligible under § 50-6-210, within thirty (30) days of the employee's death if the employer offers to provide the dependents or survivors with all the benefits provided under the workers' compensation law. The approving authority shall review and approve all such settlements on an expedited basis.

(4) The fees of physicians and charges of hospitals for services to employees under the workers' compensation law shall be subject to the approval of the commissioner or the court before which the matter is pending, as appropriate, as provided in this subdivision. Unless a medical fee or charge is contested, the department shall deem it to be reasonable. If a fee or charge is contested, the department shall permit a party to seek review only of the contested fee or charge in any court with jurisdiction to hear a matter pursuant to § 50-6-225. A court may review such case solely for the purpose of approving such fees and charges as are reasonable.

SECTION 18. Tennessee Code Annotated, Section 50-6-235, is amended by adding the following as a new subsection (d):

(d) The commissioner of labor, in consultation with the medical care and cost containment committee established in § 50-6-125, shall establish a schedule by rule for reasonable charges by physicians for preparing and giving depositions in workers' compensation cases. If necessary, the commissioner shall revise such schedule each year. If a physician charges more than the amount permitted under the schedule, then the physician is not permitted to claim the exemption from subpoena to trial created by § 24-9-101. The commissioner shall submit the initial proposed rule to the medical care and cost containment committee for comment on or before October 1, 1996.

SECTION 19. Tennessee Code Annotated, Section 50-6-236, is amended in subsection (h) by adding the following language at the beginning of the subsection:

Except for a conference requested for the purpose of initiating benefits pursuant to Section 50-6-238(a), a conference may not be requested or scheduled until the employee has reached maximum medical recovery. A conference may be continued or re-scheduled after a conference concerning the initiation of benefits until the employee reaches maximum medical recovery.

SECTION 20. Tennessee Code Annotated, Section 50-6-236, is amended by adding the following as a new subsection (l):

(l) The commissioner shall establish a program of continuing education and training for workers' compensation specialists in order to assure that specialists maintain current and appropriate skills and knowledge in performing their duties.

SECTION 21. Tennessee Code Annotated, Section 50-6-234, is amended by adding the following as a new subsection (d):

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(d) After disability payments have commenced, when the injured employee reaches maximum medical improvement and an impairment rating is given, then payments shall continue until the earlier of the following events: the injured employee returns to work; the parties agree to waive the holding of a benefit review conference; the department notifies the parties that the holding of a benefit review conference is optional; or a benefit review conference is held and a report is filed pursuant to § 50-6-240. Except as otherwise provided in this section, in no case may payments continue for more than thirty (30) days after maximum medical improvement has been reached without the agreement of the parties. The amount of any such payments shall be credited against any permanent award that is approved.

SECTION 22. Tennessee Code Annotated, Section 50-6-239, is amended by adding the following as a new subsection (c):

(c) (1) At the time of a request for a benefit review conference, the department of labor shall notify the parties in writing of the length of time required to make available a specialist to conduct a conference. If the time period is thirty (30) days or less, then the conference is mandatory for the parties. If the time period exceeds thirty (30) days, then the conference is optional for that case and the department shall inform the parties in writing that the conference is not required. The parties shall cooperate in scheduling a conference. The commissioner is authorized to promulgate rules concerning scheduling pursuant to Title 4, Chapter 5. Violation of such rules is a basis for a specialist to declare an impasse and conclude a conference.

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(2) When a benefit review conference program is mandatory for a case, a court may not conduct a trial or enter an agreed order without a report from a workers' compensation specialist pursuant to § 50-6-240, unless permitted by this section. Prior to trial or the entry of an order, the court shall determine from the parties whether a benefit review conference was held and whether the department determined that the conference was optional or mandatory.

(3) An employer and employee (or their representatives) may agree in writing to waive a mandatory benefit review conference.

SECTION 23. Tennessee Code Annotated, Section 50-6-240, is amended by deleting the section in its entirety and by substituting instead the following:

(a) (1) A dispute may be resolved either in whole or in part at the benefit review conference. If the conference results in the resolution of some of the disputed issues by mutual agreement or in a settlement, the workers' compensation specialist shall reduce the agreement or the settlement to writing. The workers' compensation specialist and each party shall sign the agreement or settlement. A settlement is not effective unless it is approved in accordance with § 50-6-206, and a settlement takes effect on the date approved.

(2) The specialist shall note in a report on unresolved issues required by this section the failure of any party to furnish documents to the specialist on request by the specialist, to cooperate in scheduling, or to provide a representative who possessed settlement authority in attendance at the conference.

(b) If the dispute is not entirely resolved at the benefit review conference, the workers' compensation specialist shall prepare a written report that also includes:

(1) A statement of each agreed upon issue; and

(2) A statement of each issue raised but not agreed upon.

(c) The workers' compensation specialist shall file the signed agreement and the report with the commissioner and the court as appropriate. Any party filing an action with a court of competent jurisdiction shall notify the department of labor of the filing at the time of the filing. After receiving such notice, the department shall file within seven (7) days with such court any report on unresolved issues pursuant to Section 50-6-240 resulting from a benefit review conference.

SECTION 24. Tennessee Code Annotated, Title 50, Chapter 6, Part 4, is amended by adding the following as a new section to be appropriately designated:

Section ___. (a)(1) The commissioner of labor shall have the same authority as the commissioner of commerce and insurance to request and obtain relevant information on workers' compensation claims. All workers' compensation insurers or their designated agents, self insurers, and the department of commerce and insurance shall report claims information and other relevant workers' compensation data necessary to determine and analyze costs of the system to the commissioner of labor or to such agents as the commissioner may designate. The commissioner of labor may promulgate all reasonable rules and regulations necessary to implement the provisions of this section in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

(2) In promulgating rules concerning data collection, the commissioner of labor shall include appropriate elements of the Detailed Claim Information Reporting Model Regulation for Workers' Compensation Insurance issued by the National Association of Insurance Commissioners and such other information as the commissioner deems necessary. The commissioner shall also consult with the advisory council on workers' compensation in defining the information needed to permit management of the system. The commissioner shall also report to the special joint committee on workers' compensation at the request of the chair of the committee.

(b) The department of labor shall gather, and has the duty to analyze, and report information relevant to the functioning of the workers' compensation system to the advisory council on workers' compensation, the general assembly, and the governor. Within the limits of available staff and other resources, the department shall respond to information requests concerning workers' compensation issues from the advisory council on workers' compensation, the general assembly, and the governor.

SECTION 25. Medical records provided to the department of labor in the course of its activities relative to benefit review conferences and the review of settlements pursuant to Tennessee Code Annotated, Title 50, Chapter 6, shall remain confidential and shall not be considered to be public records.

SECTION 26. Tennessee Code Annotated, Title 50, Chapter 6, Part 4, is amended by adding the following as a new section to be appropriately designated:

Section ___. An employer or its insurer shall initiate payment of disability and medical benefits no later than twenty-one (21) days after the occurrence of an event

which would entitle an employee to receive benefits under this chapter. Evidence of the initiation or denial of such compensation is inadmissible in a subsequent proceeding concerning the issue of the compensability of injury.

SECTION 27. Tennessee Code Annotated, Title 50, Chapter 6, Part 4, is amended by adding the following as a new section to be appropriately designated:

Section ___. In cases where an employer disputes an experience modification factor assigned to the employer, the insurer shall notify the employer of the employer's right to submit a request for review and to appeal to the commissioner of commerce and insurance pursuant to § 56-5-309(b).

SECTION 28. Tennessee Code Annotated, Section 50-6-604, is amended by deleting the section in its entirety and by substituting instead the following:

(a) In the event the commissioner of commerce and insurance elects to make the fund operational pursuant to Section 29 of this act, the existing board of directors shall terminate and a new board shall be appointed within sixty (60) days of such election.

(b) The board of directions shall initially consist of seven (7) members who are knowledgeable concerning the workers' compensation system. The state treasurer shall be an ex officio member. Initially the speaker of the senate, the speaker of the house of representatives, and the governor shall each appoint one (1) member for a two (2) year term and one (1) member for a three (3) year term. Each director shall hold office until a successor is appointed and qualifies. The board shall annually elect a chairperson from

among its members and other officers it deems necessary for the performance of its duties.

(c) (1) Once the fund is operational and the commissioner of commerce and insurance certifies it as a fund able to effectively operate under the provisions of this part and Title 56, then on the next scheduled expiration of board members' terms: (1) the members shall be elected by policyholders, and (2) the state treasurer shall on expiration of his or her term cease to be a member of the board.

(2) Such successor board shall consist of seven (7) members selected by policyholders for three (3) year terms.

SECTION 29. Tennessee Code Annotated, Section 56-5-314(c), is amended by adding the following as new subdivisions (3), (4) and (5):

(3) If, by July 1, 2000, the commissioner of commerce and insurance determines that the membership of the assigned risk pool, created pursuant to § 56-5-314(c), exceeds ten percent (10%) of the membership of the eligible employer market, as based on premium, excluding self-insured employers and self-insured groups, then the commissioner shall either activate the competitive state workers' compensation insurance fund, established by Title 50, Chapter 6, Part 6, or implement a plan of direct assignment on a randomized basis of all assigned risk plan policies to insurers offering workers' compensation insurance subject to subdivision (4).

(4) If a direct assignment plan becomes operational, pursuant to this section, on July 1, 2000, then the commissioner shall structure the randomized assignment so that small insurers do not bear a disproportionate share of risk in the market.

(5) If the commissioner of commerce and insurance elects to make the competitive state workers' compensation fund operational pursuant to subdivision (3), then the fund shall not be required to meet the reserve requirements for a domestic insurance company for the first seven (7) years of operation provided by §§ 50-6-601 and 50-6-603. The commissioner shall promptly notify the governor, the speaker of the senate, and the speaker of the house of representatives of such election.

SECTION 30. Tennessee Code Annotated, Section 56-5-314(c), is amended by adding the following as a new subdivision to be appropriately designated:

( )(A) On and after January 1, 1997, the plan developed under this subsection shall assign an insured in this plan to one (1) of three (3) subplans. Those subplans are:

(i) The small employer plan, for insureds not eligible for experience rating;

(ii) The special risk plan, for insureds that are employers whose experience modifications are 1.10 or less; and

(iii) The safety incentive plan, for all other risks. The commissioner is authorized to establish increasing levels of premium surcharges for employers with experience modification factors in excess of 1.10. Such surcharges may not exceed fifty percent (50%) for employers with modification factors in excess of 2.00.

(B) The rates for (A)(i) and (ii) may not exceed those in the voluntary market. The commissioner shall annually establish the rates to be charged pursuant to this subdivision.

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SECTION 31. Tennessee Code Annotated, Title 56, Chapter 5, Part 3, is amended by adding the following as a new section to be appropriately designated:

Section ___. It is the intent of the general assembly that the advisory prospective loss costs system for workers' compensation insurance be implemented with the goal of providing long-term stability in the workers' compensation insurance market.

SECTION 32. Tennessee Code Annotated, Section 50-6-402(b), is amended by deleting the subsection and substituting instead the following:

Before approving any advisory prospective loss cost filing pursuant to this part or Title 56, the commissioner of commerce and insurance shall consult with the advisory council on workers' compensation concerning such filing. The council shall have thirty (30) days to provide written comment on the filing. The council shall meet to provide such comment. The commissioner shall approve or disapprove the filing within sixty (60) days of receiving the filing. The commissioner shall report the action taken on any such filing to the special joint committee on workers' compensation and to the speaker of the senate and the speaker of the house of representatives of the general assembly.

SECTION 33. Tennessee Code Annotated, Section 50-6-402(c), is amended by deleting the subsection in its entirety.

SECTION 34. Tennessee Code Annotated, Section 56-5-302, is amended by adding new subdivisions (12), (13) and (14), which shall read as follows:

(12) "Advisory Prospective Loss Costs "means historical aggregate losses and loss adjustment expenses projected through development to their ultimate value and

through trending to a future point in time. Advisory Prospective Loss Costs shall not include provisions for profit or for expenses other than loss adjustment expenses.

(13) “Rate” shall include Advisory Prospective Loss Costs.

(14) “Multiplier” means a workers' compensation insurance company's determination of the expenses, other than loss expense and loss adjustment expense, associated with writing workers' compensation insurance, which shall be expressed as a multiplicative factor to be applied equally and uniformly to the Advisory Prospective Loss Costs approved by the commissioner in making rates for all classification of risks utilized by such company.

SECTION 35. Tennessee Code Annotated, Section 56-5-303(a), is amended by deleting such subsection in its entirety and by substituting the following:

(a) GENERAL. Rates: (1) shall not be excessive, inadequate or unfairly discriminatory or, (2) in the case of an Advisory Prospective Loss Costs filing, shall reasonably reflect projected losses and loss adjustment expenses.

SECTION 36. Tennessee Code Annotated, Section 56-5-306, is amended by deleting the section in its entirety and by substituting the following:

(a)(1) Except as provided in subsections (b) and (c), every insurer of commercial risk insurance shall file with the commissioner all rates, supplementary rate information, policy forms and endorsements, not later than fifteen (15) days after the effective date; provided, that such rates, supplementary rate information, policy forms and endorsements need not be filed for inland marine risks which by general custom of the

business are not written according to manual rules of rating plans. Upon request of the commissioner, supporting information shall also be filed.

(2) The commissioner may, after a hearing providing not less than twenty (20) days written notice to the insurer, disapprove any policy form or endorsement already in effect if it does not comply with the law or with rules adopted pursuant to this part or if it contains any provision which is unfair, deceptive or misleading. Any such disapproval order shall specify the reasons for the commissioner's findings and the date, not less than thirty (30) days after issuance of the order, when the disapproval is effective and it shall thereafter be unlawful for the insurer to use the form or endorsement in this state.

(b) With respect to workers' compensation insurance, a rate service organization designated by one or more insurers shall develop and file for approval with the commissioner in accordance with the provisions of this section, a filing on behalf of authorized insurers containing Advisory Prospective Loss Costs and supporting actuarial and statistical data for workers' compensation insurance. An Advisory Prospective Loss Costs filing shall become effective only when approved pursuant to § 50-6-402.

(c) Each workers' compensation insurer, or group of insurers under common ownership, shall individually file with the commissioner the multiplier and supporting information not later than fifteen (15) days after the effective date.

SECTION 37. Tennessee Code Annotated, Section 56-5-307(d), is amended by deleting subdivision (1) in its entirety and by substituting instead the following:

(1)(A) The filings required by §§ 56-5-305 and 56-5-306, except § 56-5-306(c), including Advisory Prospective Loss Costs, other than rates for policies

issued pursuant to any residual market mechanism for workers' compensation insurance established under § 56-5-314, may be made by a rate service organization designated by an insurer.

(B) The filings required by § 56-5-306 for rates for polices issued pursuant to any residual market mechanism established under §56-5-314 for workers' compensation insurance shall be made by a rate service organization designated by the commissioner.

SECTION 38. Tennessee Code Annotated, Section 56-5-308(a) and (b), are amended by deleting such subsections in their entireties and by substituting the following:

(a) BASIS FOR DISAPPROVAL

The commissioner shall disapprove a rate if (1) the commissioner finds that the rate is excessive, inadequate or unfairly discriminatory or (2) in the case of an Advisory Prospective Loss Costs filing, the commissioner finds such filing does not reasonably reflect projected losses, including loss adjustment expenses.

(b) DISAPPROVAL PROCEDURE

(1) If the commissioner disapproves a filing, the commissioner shall issue a written order specifying in what respect that the rate proposed in such filing is excessive, inadequate, or unfairly discriminatory or otherwise fails to meet the requirements of this part. The person making such filing shall be given a hearing upon written request made within thirty (30) days after the disapproval order.

(2) If the commissioner disapproves rates already in effect, the commissioner shall issue such an order only after a hearing held on not less than twenty (20) days written notice to the insurer or rate service organization which made the filing. The order shall be issued within fifteen (15) days after the close of the hearing and shall specify in what respects the rates fail to meet the requirements of this part. The order shall also state when, within a reasonable period of time, but not less than forty-five (45) days, the further use of such rate in contracts of insurance made thereafter shall be prohibited. The order may include a provision for premium adjustment for policies issued, renewed, or nonrenewed after the effective date of such order.

SECTION 39. Tennessee Code Annotated, Section 56-5-313, is amended by deleting such section in its entirety and substituting instead the following:

Except as provided in this chapter, no insurer may agree with any other insurer or with a rate service organization or an advisory organization to adhere to or use any rate or supplementary rate information. The fact that any insurer adheres to or uses such material is not sufficient in itself to support a finding that an agreement to adhere or use exists but may be used for the purpose of supplementing other evidence as to the existence of such agreement. Two (2) or more insurers having common ownership or operating in this state under common management or control may act in concert between or among themselves in the same manner as if they constitute a single insurer.

SECTION 40. Tennessee Code Annotated, Title 56, Chapter 5, is amended by adding the following new section:

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Section ___. (a) The commissioner shall designate a rate service organization to assist in gathering, compiling and reporting relevant workers' compensation insurance statistical information. Every workers' compensation insurer shall record and report its workers' compensation insurance experience to such designated rate service organization as set forth in the uniform statistical plan approved by the commissioner and if requested shall file a copy of the report with the commissioner.

(b) Each workers' compensation insurer shall be a member of the workers' compensation insurance rate service organization. Each workers' compensation insurer shall adhere to the policy forms filed by such designated rate service organization.

(c) Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating plan that has been filed with the commissioner by such designated rate service organization and approved by the commissioner.

(d) Subject to the approval of the commissioner, the rate service organization shall develop and file rules reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan and the uniform classification system.

SECTION 41. Tennessee Code Annotated, Title 56, Chapter 5, is amended by adding the following new section:

Section ___. (a) Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.

(b) In order to further conform administration of rate regulatory laws, the commissioner and every insurer and the advisory organization designated by the

commissioner may exchange information and experience data with insurance supervisory officials, insurers and advisory organizations in other states and may consult with them with respect to rate making and the application of rating systems.

(c) Cooperation among advisory organizations, or among advisory organizations and insurers in rate making or in other matters within the scope of this chapter is authorized, but the filings resulting from such cooperation are subject to all provisions of this chapter. The commissioner with the assistance of the attorney general and reporter may review such cooperative activities and practices. If after a hearing any such activity or practice is found to violate the provisions of this chapter, the commissioner may issue a written order specifying that such activity or practice violates the provision of this chapter and requiring the discontinuance of such activity.

SECTION 42. Nothing in Sections 28 through 49 of this act shall apply to pooling agreements described in Tennessee Code Annotated, Section 50-6-405(c).

SECTION 43. (a) On July 1, 2001, the provisions of Sections 28 through 42, inclusive, of this act are hereby repealed and the provisions of Tennessee Code Annotated, Title 50 and Title 56, amended by such sections are hereby revived and be reenacted in the form and language in which they existed immediately prior to the enactment of this act.

(b) On or before January 1, 2001, the advisory council on workers' compensation shall report to the general assembly on a study of the market impact of the provisions of this act.

SECTION 44. Tennessee Code Annotated, Section 50-3-408, is amended by deleting the language "and shall accrue to the state of Tennessee," and substituting instead "and in the general fund shall be earmarked for expenditure solely for use in the department of labor

equally between enforcement activities and the safety consulting service conducted under this chapter,".

SECTION 45. Tennessee Code Annotated, Title 50, Chapter 3, is amended by adding the following as a new section to be appropriately designated:

Section ___. (a) The commissioner of labor shall refer any fine or penalty assessed under this chapter, which remains unpaid for more than six (6) months from the date the order against the violator becomes final, to the attorney general and reporter for enforcement. The attorney general and reporter is authorized to contract with one (1) or more private entities or individuals for the collection of these fines and penalties.

(b) When any person or entity is assessed a fine or penalty under this chapter, and such fines or penalties are not paid on or before the date they are due, as established in the final order or otherwise, interest shall be added to the amount due, in addition to any further penalty provided by law, at the rate established pursuant to Tennessee Code Annotated, Section 67-1-801(a)(1).

(c) In addition to the interest assessed pursuant to subsection (b) of this section, there shall be imposed a penalty in the amount of ten percent (10%) of the unpaid fine or penalty amount for each thirty (30) days or fraction thereof that the fine or penalty remains unpaid after becoming due, up to a maximum of thirty percent (30%) of the unpaid amount.

(d) Any interest or penalty imposed due to failure to pay a fine or penalty assessed under this chapter shall be considered a part of such delinquent fine or penalty and shall be collectible in the same manner as the fine or penalty.

(e) Any interest or penalty imposed and collected pursuant to this section shall be used to offset the cost of collection of the fines and penalties assessed under this chapter.

(f) The commissioner shall include within the department of labor's annual report to the general assembly and the governor a listing of employers whose penalties remain unpaid more than one (1) year after a final order has been entered. The listing shall include the amount of any unpaid penalty for each employer.

SECTION 46. Tennessee Code Annotated, Title 50, Chapter 3, is amended by adding the following as a new section to be appropriately designated:

Section ___. The commissioner of labor shall require the full amount of any penalty assessed by a final order of the department to be paid unless the commissioner receives approval to compromise and settle the amount to be paid pursuant to § 20-13-104.

SECTION 47. Tennessee Code Annotated, Section 38-6-102, is amended by adding the following as a new subsection (d):

(d) There is established within the criminal investigation division a special workers' compensation fraud investigation unit. This unit shall investigate cases of workers' compensation fraud under Title 50, Chapter 6 referred by the department of commerce and insurance and the department of labor. The unit shall work in

cooperation with the fraud unit of the department of commerce and insurance, the department of labor, the district attorney generals and other law enforcement agencies. A summary of the unit's work shall be included in the bureau's annual report.

SECTION 48. Tennessee Code Annotated, Title 56, is amended by adding the following as a new part to be appropriately designated:

Section 56-__-101. Section 48 may be known and cited as the Workers' Compensation Fraud Act.

Section 56-__-102. As used in this chapter:

(1) "Actual malice" means the knowledge that information is false, or reckless disregard of whether it is false.

(2) "Conceal" means to take affirmative action to prevent others from discovering information. Mere failure to disclose information does not constitute concealment. Action by the holder of a legal privilege, or one who has a reasonable belief that a privilege exists, to prevent discovery of privileged information does not constitute concealment.

(3) "Insurance policy" means the written instrument in which are set forth the terms of any binder of coverage or contract of insurance (including a binder or contract issued by a state-assigned risk plan) or other forms of workers' compensation insurance.

(4) "Insurance professional" means sales agents, managing general agents, brokers, producers, adjusters and third party administrators.

(5) "Insurance transaction" means a transaction by, between or among (1) an insurer or a person who acts on behalf of an insurer; and (2) an insured, claimant, applicant for insurance, public adjuster, insurance professional, practitioner, or any

person who acts on behalf of any of the foregoing, for the purpose of obtaining insurance or reinsurance, calculating insurance premiums, submitting a claim, negotiating or adjusting a claim, or otherwise obtaining insurance, self-insurance, or reinsurance or obtaining the benefits thereof or therefrom.

(6) "Insurer" means any person purporting to engage in the business of insurance or authorized to do business in the state or subject to regulation by the state, who undertakes to indemnify another against loss, damage or liability arising from a contingent or unknown event related to causes arising under Title 50, Chapter 6.

(7) "Pattern or practice" means repeated, routine or generalized in nature, and not merely isolated or sporadic.

(8) "Person" means a natural person, company, corporation, unincorporated association, partnership, professional corporation, agency of government and any other entity.

(9) "Practitioner" means a licensee of this state authorized to practice medicine and surgery, psychology, chiropractic or law or any other licensee of the state or person required to be licensed in the state whose services are compensated either in whole or in part, directly or indirectly, by insurance proceeds.

(10) "Premium" means consideration paid or payable for coverage under an insurance policy, "Premium" includes any payments, whether due within the insurance policy term or otherwise, and deductible payments whether advanced by the insurer or insurance professional and subject to reimbursement by the insured or otherwise, any self insured retention or payments, whether advanced by the insurer or insurance

professions and subject to reimbursement by the insured or otherwise, and any collateral or security to be provided to collateralize obligations to pay any of the above.

(11) "Reckless" means without reasonable belief of the truth, or, for the purposes of Section 56-__-104(a)(3), with a high degree of awareness of probable insolvency.

(12) "Withhold" means to fail to disclose facts or information which any law other than this act requires to be disclosed. Mere failure to disclose information does not constitute “withholding" if the one failing to disclose reasonably believes that there is not duty to disclose.

Section 56-__-103.

(a) Any person who, knowingly and with intent to defraud, and for the purpose of depriving another of property or for pecuniary gain, commits or participates in or permits its employees or its agents to commit any of the following acts, has committed a fraudulent insurance act:

(1) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured, insurer, claimant or applicant to an insurer or insurance professional in connection with an insurance transaction any information which contains false representations as to any material fact, or which withholds or conceals a material fact concerning any of the following:

(i) The application for, rating of, or renewal of, any insurance policy; or

(ii) A claim for payment or benefit pursuant to any insurance policy;

(iii) Payments made in accordance with the terms of any insurance policy;

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(2) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, or, insurance professional in connection with an insurance transaction any information which contains false representations as to any material fact, or which withholds or conceals a material fact, concerning any of the following:

(i) The solicitation for sale of any insurance policy or purported insurance policy;

(ii) An application for certificate of authority; or

(iii) The financial condition of any insurer;

(3) Solicits or accepts new or renewal insurance risks by or for an insolvent insurer;

(4) Removes the assets or records of assets, transactions and affairs or such material part thereof, from the home office or other place of business of the insurer, or from the place of safekeeping of the insurer, or destroys or sequesters the same from the department of commerce and insurance;

(5) Diverts, misappropriates, converts or embezzles funds of an insurer, an insured, claimant or applicant for insurance in connection with;

(i) An insurance transaction; or

(ii) The conduct of business activities by an insurer or insurance professional; or

(6) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured or insurer, or insurance professional, to a claimant or any other person in connection with an insurance transaction any

information which contains false representations as to any material fact, or which withholds or conceals a material fact concerning any of the following:

(i) A claim for payment or benefit pursuant to any insurance policy; or

(ii) Payments made in accordance with the terms of any insurance policy;

(b) It shall be unlawful for any person to commit, or to attempt to commit, or to aid, assist, abet or solicit another to commit, or to conspire to commit a fraudulent insurance act.

(c) A practitioner violates this section only if the practitioner has been engaged in conduct that constitutes a pattern or practice of violation of this section.

Section 56-__-104.

(a) Any person who commits, or participates in, or permits its employees' or its agents to commit any of the following acts with an intent to induce reliance, has committed an unlawful insurance act:

(1) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured, insurer, claimant or applicant to an insurer or insurance professional in connection with an insurance transaction any information which the person knows to contain false representations, or representations the falsity of which the person has recklessly disregarded, as to any material fact, or which withholds or conceals a material fact, concerning any of the following:

(i) The application for, rating of, or renewal of, any insurance policy;

(ii) A claim for payment or benefit pursuant to any insurance policy; or

(iii) Payments made in accordance with the terms of any insurance policy;

(2) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, to or by an insurer, insurance professional in connection with an insurance transaction any information which the person knows to contain false representations, or representations the falsity of which the person has recklessly disregarded, as to any material fact, or which withholds or conceals a material fact, concerning any of the following:

(i) The solicitation for sale of any insurance policy or purported insurance policy;

(ii) An application for certificate of authority; or

(iii) The financial condition of any insurer;

(3) Solicits or accepts new or renewal insurance risks by or for an insurer which the person knows was insolvent or the insolvency of which the person recklessly disregards.

(4) Presents, causes to be presented, or prepares with knowledge or belief that it will be presented, by or on behalf of an insured or insurer, or insurance professional or any other person to a claimant in connection with an insurance transaction any information which the person knows to contain false representations, or representations the falsity of which the person has recklessly disregarded, as to any material fact, or which withholds or conceals a material fact, concerning any of the following:

(i) A claim for payment for benefit pursuant to any insurance policy; or

(ii) Payments made in accordance with the terms of any insurance policy;

(b) It shall be unlawful for any person to commit, or to attempt to commit, or to aid, assist, abet or solicit another to commit, or to conspire to commit an unlawful insurance act.

(c) A practitioner violates this section only if the practitioner has been engaged in conduct that constitutes a pattern or practice of violation of this section.

Section 56-__-105. A person who violates Section 56-__-103 of this act commits:

(1) A Class A misdemeanor if the value of the property or services obtained is ten thousand dollars ($10,000) or less;

(2) A Class E felony if the value of the property or services obtained is more than ten thousand dollars ($10,000) but less than sixty thousand dollars ($60,000); and

(3) A Class B felony if the value of the property or services obtained is sixty thousand dollars ($60,000) or more.

Section 56-__-106.

(a) A person convicted of a violation of Section 56-__-103 of this act shall be ordered to make monetary restitution for any financial loss or damages sustained by any other person as a result of the violation. Financial loss or damage shall include, but is not necessarily limited to, loss of earnings, out-of-pocket and other expenses, paid deductible amounts under an insurance policy, insurer claim payments, costs reasonably attributed to investigations and recovery efforts by owners, insurers, insurance professionals, law enforcement and other public authorities, and costs of prosecution.

(b) When restitution is ordered, the court shall determine its extent and methods. Restitution may be imposed in addition to a fine and, if ordered, any other penalty, but not in lieu thereof. The court shall determine whether restitution, if ordered, shall be paid in a single payment or installments and shall fix a period of time within which payment of restitution is to be made in full.

Section 56-__-107. Any practitioner determined by the court to have violated Section 56-__-103 shall be deemed to have committed an act involving moral turpitude that is inimical to the public well-being. The court or prosecutor shall notify the appropriate licensing authority in this state of the judgment for appropriate disciplinary action, including revocation of any such professional's license, and may notify appropriate licensing authorities in any other jurisdictions where the practitioner is licensed. Any victim may notify the appropriate licensing authorities in this state and any other jurisdiction where the practitioner is licensed, of the conviction. The state licensing authority shall take appropriate administrative action authorized by state law, to consider the imposition of any administrative sanctions or license revocations as provided by law against the practitioner. It is hereby recommended by the legislature that the state supreme court shall take appropriate action, including but not limited to disbarment with respect to any attorney found guilty of such felony. All such referrals to the appropriate licensing or other agencies, and all dispositive actions thereof, shall be a matter of public record.

Section 56-__-108.

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(a)(1)Any person economically injured by reason of a violation of Section 56-__-104 may recover therefor from the person(s) violating Section 56-__-104, in any appropriate court the following:

(i) Return of any profit, benefit, compensation or payment received by the person violating Section 56-__-104 directly resulting from said violation;

(ii) Reasonable attorney's fees, related legal expenses, including internal legal expenses and court costs.

(2) An action maintained under this subsection may neither be certified as a class action nor be made part of a class action.

(b)(1) Any person economically injured by reason of a violation of Section 56-__-103 may recover therefor from the person(s) violating Section 56-__-103, in any appropriate court the following:

(i) Return of any profit, benefit, compensation or payment received by the person violating Section 56-__-103 directly resulting from said violation;

(ii) Reasonable attorney's fees, related legal expenses, including internal legal expenses and court costs;

(iii) All other economic damages directly resulting from the violation of Section 56-__-103;

(iv) Reasonable investigative fees based on a reasonable estimate of the time and expense incurred in the investigation of the violation(s) of Section 56-__-103 proved at trial;

(v) A penalty of no less than one thousand dollars ($1,000) and no greater than ten thousand dollars ($10,000).

(2) An action maintained under this subsection may neither be certified as a class action nor be made part of a class action.

(c) Any person injured in his or her business or property by a person violating Section 56-__-103, upon a showing of clear and convincing evidence that such violation was part of a pattern or practice of such violations, shall be entitled to recover threefold the injured person's economic damages. An action for treble damages must be brought within one (1) year of the last to occur of such violations. One-third of the treble damages awarded shall be payable to the state to be used solely for the purpose of investigation and prosecution of violations of this act or other fraudulent behavior relating to insurance transactions, and/or for public education relating to workers' compensation insurance fraud. An action maintained under this subsection may neither be certified as a class action nor be made part of a class action, unless the violations of Section 56-__-103 giving rise to the action resulted in criminal conviction of the violator(s) under Section 56-__-105.

(d) The district attorney general shall have authority to maintain civil proceedings on behalf of the department of commerce and insurance and any victims of violations of Section 56-__-103. In any such action, the court shall proceed as soon as practicable to the hearing and determination thereof. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

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(1) The court shall have jurisdiction to prevent and restrain violations of Section 3 of this act by issuing appropriate orders.

(2) In any action commenced under this Section 56-__-108(d), the court, upon finding that any person has violated Section 56-__-103, shall levy a fine of up to five thousand dollars ($5,000) for each violation.

(e) Any court in which a prosecution for violation of Section 56-__-103 is pending shall have authority to stay or limit proceedings in any civil action regarding the same or related conduct. Any court in which is pending a civil action brought pursuant to Section 56-__-108(d) may stay or limit proceedings in actions brought pursuant to Section 56-__-108(a) through (c) regarding the same or related conduct or may transfer such actions or consolidate them before itself or allow the plaintiffs in such actions to participate in the action brought pursuant to Section 56-__-108(d), as it shall prescribe.

(f) Any cause of action under this section for violation of Section 56-__-103 or Section 56-__-104 must be brought within one (1) year of the commission of the last occurring of the acts constituting such violation, or within one (1) year of the time the plaintiff discovered (or with reasonable diligence could have discovered) such acts, whichever is later.

(g) Any person economically injured by reason of a violation of Section 56-__-103 or Section 56-__-104 of this act may recover under only one of the subsections in this section.

Section 56-__-109.

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(a) The remedies expressly provided in Section 56-__-108 shall be the only private remedies for violations of this act and no additional remedies shall be implied. The remedies available under Section 56-__-108 shall not be used in conjunction with or in addition to any other remedies available at law or in equity to duplicate recovery for the same element of economic damage. Further, in any civil action pleading both exemplary damages and the treble damages available in Section 56-__-108 (c), plaintiff shall elect one or the other remedy, but not both, at the conclusion of the evidentiary phase of the trial.

(b) However, nothing in this act shall limit or abrogate any right of action which would have existed in the absence of this act, but no action based on such a right shall rely on this act to establish a standard of conduct or for any other purpose.

Section 56-__-110.

(a) When any law enforcement official or authority, the department of commerce and insurance or department of labor requests information from an insurer, insurance professional or any other person for the purpose of detecting, prosecuting or preventing insurance fraud, the insurer, insurance professional or other person shall take all reasonable actions to promptly provide the information requested, subject to any legal privilege protecting such information.

(b) Any insurer, insurance professional or other person that has reasonable belief that an act violating Section 56-__-103 or 56-__-104 will be, is being, or has been committed shall furnish and disclose any information in its possession concerning such act to the appropriate law enforcement official or authority, department of commerce and

insurance or department or labor, subject to any legal privilege protecting such information.

(c) An insurer, insurance professional or other person providing information to any law enforcement, regulatory, licensing or other governmental agency under subsections (a) or (b), shall have the right to request information in the possession or control of the agency relating to the suspected violation or to a pattern of related activity, except information which was privileged or confidential under the laws of this state prior to its submission to the agency. In instances where disclosure would not jeopardize an ongoing investigation or prosecution, the agency shall provide the requested information to the insurer, insurance professional or other person. The agency may request that the insurer, insurance professional or other person keep the disclosed information confidential.

(d) Any person that has a reasonable belief that an act violating this act will be, is being, or has been committed; or any person who collects, reviews or analyzes information concerning insurance fraud may furnish and disclose any information in its possession concerning such act to an authorized representative of an insurer that requests the information for the purpose of detecting, prosecuting or preventing insurance fraud.

(e) Failure to cooperate with a request for information from an appropriate local or state authority shall bar a person's eligibility for restitution from any proceeds resulting from such governmental investigation and prosecution.

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Section 56-__-111. In the absence of actual malice, no person furnishing, disclosing or requesting information pursuant to Section 56-__-110 shall be subject to civil liability for libel, slander, or any other cause of action arising from the furnishing, disclosing or requesting of such information. No person providing information pursuant to Section 56-__-110(a) shall be subject to civil liability for any cause of action arising from the person's provision of requested information. Any person against whom any action is brought who is found to be immune from liability under this section, shall be entitled to recover reasonable attorney's fees and costs from the person or party who brought the action. This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person.

Section 56-__-112. (a) (1) Within six (6) months of the effective date of this act, every insurer shall prepare, implement, maintain and submit to the department of commerce and insurance a workers' compensation insurance anti-fraud plan.

(2) Each insurer's anti-fraud plan shall outline specific procedures to:

(A) prevent, detect and investigate all forms of insurance fraud, including fraud involving the insurer's employees or agents; fraud resulting from misrepresentations in the application, renewal or rating of insurance policies; claims fraud; and security of the insurer's data processing system;

(B) educate appropriate employees on fraud detection and the insurer's anti-fraud plan;

(C) provide for the hiring of or contracting for fraud investigators;

(D) report insurance fraud to appropriate law enforcement and regulatory authorities in the investigation and prosecution of insurance fraud; and

(E) pursue restitution for financial loss caused by insurance fraud, where appropriate.

(3) The commissioner may review each insurer's anti-fraud plan to determine if it complies with the requirements of this section.

(4) It shall be the responsibility of the commissioner to assure insurer compliance with anti-fraud plans submitted to the commissioner. The commissioner may require reasonable modification of the insurer's anti-fraud plan, or may require other reasonable remedial action if the review or examination reveals substantial non-compliance with the terms of the insurer's own anti-fraud plan.

(5) The commissioner may require each insurer to file a summary of the insurer's anti-fraud activities and results. The anti-fraud plans and the summary of the insurer's anti-fraud activities and results are not public records and are exempt from the provisions of Title 10, Chapter 7, Part 5, and shall be proprietary and not subject to public examination, and shall not be discoverable or admissible in civil litigation.

(6) This section confers no private rights of action.

(b) (1) No later than six (6) months alter the effective date of this act, all printed applications for insurance, and all printed claim forms provided and required by an insurer or required by law as a condition of payment of a claim, shall contain a statement, permanently affixed to the application or claim form, that clearly states in substance the following:

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"It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

(2) The lack of a statement required in this section does not constitute a defense in any criminal prosecution under Section 56-__-103 nor in any civil action under Sections 56-__-103 or 104.

(c) Notwithstanding any other provision of Title 56, the following are the exclusive monetary penalties for violation of this section. Insurers that fail to prepare, implement, maintain and submit to the department of commerce and insurance an insurance anti-fraud plan are subject to a penalty of five hundred ($500) dollars per day, not to exceed twenty-five thousand ($25,000) dollars.

Section 56-__-113. The Workers' Compensation Fraud Act shall take effect on July 1, 1996, the public welfare requiring it and shall apply violations on or after that date.

SECTION 49. Tennessee Code Annotated, Section 50-6-110, is amended by adding the following as a new subsection:

(c) (1) In cases where the employer has implemented a drug-free workplace pursuant to Section 50 of this act, if the injured employee has, at the time of the injury, a blood alcohol concentration level equal, as determined by blood or breath testing, to or greater than the level specified in § 55-10-408(a) for non-safety sensitive positions, and four hundredths of one percent (.04%) for safety-sensitive positions, or if the injured employee has a positive confirmation

of a drug as defined in this act, it is presumed that the injury was occasioned primarily by the intoxication of, or by the influence of the drug or alcohol upon the employee. This presumption may be rebutted by clear and convincing evidence that the intoxication or influence of the drug did not contribute to the injury. Percent by weight of alcohol in the blood must be based upon grams of alcohol per one hundred (100) milliliters of blood. If the results are positive, the testing facility must maintain the specimen for a minimum of three hundred sixty-five (365) days at -20° C. Blood serum may be used for testing purposes under this chapter; however, if this test is used, the presumptions under this section do not arise unless the blood alcohol level is proved to be medically and scientifically equivalent to or greater than the comparable blood alcohol level that would have been obtained if the test were based on percent by weight of alcohol in the blood. However, if, before the accident, the employer had actual knowledge of and acquiesced in the employee's presence at the workplace while under the influence of such alcohol or drug, the employer retains the burden of proof in asserting any defense under subsections (a) and (b) and this subsection does not apply.

(2) If the injured worker refuses to submit to a drug test, it shall be presumed in the absence of clear and convincing evidence to the contrary that the injury was occasioned primarily by the influence of drugs.

(3) The commissioner of labor shall provide by rule for the authorization and regulation of drug testing policies, procedures, and methods. Testing of

injured employees pursuant to a drug-free workplace program under Section 50 shall not commence until such rules are adopted.

SECTION 50. Tennessee Code Annotated, Title 50, is amended by adding the following as a new chapter:

Section 50-__-101.

(a) It is the intent of the general assembly to promote drug-free workplaces in order that employers in the state be afforded the opportunity to maximize their levels of productivity, enhance their competitive positions in the marketplace, and reach their desired levels of success without experiencing the costs, delays, and tragedies associated with work-related accidents resulting from drug abuse by employees. It is further the intent of the general assembly that drug abuse be discouraged and that employees who choose to engage in drug abuse face the risk of unemployment and the forfeiture of workers' compensation benefits.

(b) If an employer implements a drug-free workplace program in accordance with this chapter which includes notice, education, and procedural requirements for testing for drugs and alcohol pursuant to rules developed by the division, the employer may require the employee to submit to a test for the presence of drugs or alcohol and, if a drug or alcohol is found to be present in the employee's system at a level prescribed by rule adopted pursuant to this act, the employee may be terminated and forfeits his or her eligibility for medical and indemnity benefits. However, a drug-free workplace program must require the

employer to notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and, if an injured employee refuses to submit to a test for drugs or alcohol, the employee forfeits eligibility for medical and indemnity benefits.

Section 50-__-102. Sections 50-__-103 through 50-__-111, inclusive, apply to a drug-free workplace program implemented pursuant to rules adopted by the commissioner of labor.

Section 50-__-103. Except where the context otherwise requires, as used in this act:

(1) "Chain of custody" refers to the methodology of tracking specified materials or substances for the purpose of maintaining control and accountability from initial collection to final disposition for all such materials or substances and providing for accountability at each stage in handling, testing, and storing specimens and reporting test results.

(2) “Confirmation test," "confirmed test” or "confirmed drug test" means a second analytical procedure used to identify the presence of a specific drug or metabolite in a specimen, which test must be different in scientific principle from that of the initial test procedure and must be capable of providing requisite specificity, sensitivity, and quantitative accuracy.

(3) "Drug" means alcohol or any drug subject to testing pursuant to drug testing regulations adopted by the United States department of transportation. An

employer may test an individual for any or all of such drugs. The commissioner of labor may add additional drugs by rule in accordance with Section 50-__-111.

(4) "Drug rehabilitation program" means a service provider that provides confidential, timely, and expert identification, assessment, and resolution of employee drug abuse.

(5) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered, by a laboratory certified by the United States department of health and human services or licensed by the department of health, for the purpose of determining the presence or absence of a drug or its metabolites pursuant to regulations governing drug testing adopted by the United States department of transportation.

(6) "Employee" means any person who works for salary, wages, or other remuneration for an employer.

(7) "Employee assistance program" means an established program capable of providing expert assessment of employee personal concerns; confidential and timely identification services with regard to employee drug abuse; referrals of employees for appropriate diagnosis, treatment, and assistance; and follow-up services for employees who participate in the program or require monitoring after returning to work. If, in addition to the above activities, an employee assistance program provides diagnostic and treatment services, these services shall in all cases be provided by the program.

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(8) "Employer" means a person or entity that employs a person and that is covered by the Workers' Compensation Law and which maintains a drug-free workplace pursuant to this chapter.

(9) "Initial drug test" means a procedure that qualifies as a “screening test” or “initial test” pursuant to regulations governing drug testing adopted by the United States department of transportation.

(10) "Job applicant" means a person who has applied for a position with an employer and has been offered employment conditioned upon successfully passing a drug test, and may have begun work pending the results of the drug test.

(11) "Medical review officer" or "MRO" means a licensed physician, employed with or contracted with an employer, who has knowledge of substance abuse disorders, laboratory testing procedures, and chain of custody collection procedures; who verifies positive, confirmed test results; and who has the necessary medical training to interpret and evaluate an employee's positive test result in relation to the employee's medical history or any other relevant biomedical information.

(12) "Prescription or nonprescription medication" means a drug or medication obtained pursuant to a prescription or a medication that is authorized pursuant to federal or state law for general distribution and use without a prescription in the treatment of human diseases, ailments, or injuries.

(13) "Reasonable-suspicion drug testing" means drug testing based on a belief that an employee is using or has used drugs in violation of the employer's policy drawn from specific objective and articulable facts and reasonable inferences drawn from those facts in light of experience. Among other things, such facts and inferences may be based upon:

(A) Observable phenomena while at work, such as direct observation of drug use or of the physical symptoms or manifestations of being under the influence of a drug;

(B) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance;

(C) A report of drug use, provided by a reliable and credible source;

(D) Evidence that an individual has tampered with a drug test during his employment with the current employer;

(E) Information that an employee has caused, contributed to, or been involved in an accident while at work; or

(F) Evidence that an employee has used, possessed, sold, solicited, or transferred drugs while working or while on the employer's premises or while operating the employer's vehicle, machinery, or equipment.

(14) "Safety-sensitive position" means a position involving a safety-sensitive function pursuant to regulations governing drug testing adopted by the

United States department of transportation. For drug-free workplaces, the commissioner is authorized, with the approval of the advisory council on workers' compensation, to promulgate rules expanding the scope of safety-sensitive position to cases where impairment may present a clear and present risk to co-workers or other persons.

(15) "Specimen" means tissue, fluid, or a product of the human body capable of revealing the presence of drugs or their metabolites.

Section 50-__-104. An employer may test an employee or job applicant for any drug described in Section 50-__-103(3). In order to qualify as having established a drug-free workplace program which affords an employer the ability to qualify for the discounts provided under Section 51 and deny workers compensation medical and indemnity benefits and shift the burden of proof under Section 49, all drug testing conducted by employers shall be in conformity with the standards and procedures established in this chapter and all applicable rules adopted pursuant to this chapter. If an employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established in this section and in applicable rules, the employer shall not be eligible for: (1) discounts under Section 51; or (2) a shift in the burden of proof pursuant to Section 49; or (3) denial of medical and indemnity benefits. All employers qualifying for and receiving discounts provided under Section 51 must be reported annually by the insurer to the division.

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(a) One time only, prior to testing, an employer shall give all employees and job applicants for employment a written policy statement which contains:

(1) A general statement of the employer's policy on employee drug use, which must identify:

(A) The types of drug testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug testing or drug testing conducted on any other basis; and

(B) The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result;

(2) A statement advising the employee or job applicant of the existence of this section;

(3) A general statement concerning confidentiality;

(4) Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications to a medical review officer both before and after being tested;

(5) A list of the most common medications, by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications as developed by the department of health shall be available to employers through the division of workers' compensation of the department of labor;

(6) The consequences of refusing to submit to a drug test;

(7) A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs;

(8) A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within five (5) working days after receiving written notification of the test result; that if an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the employer; and that a person may contest the drug test result pursuant to rules adopted by the department of labor;

(9) A statement informing the employee or job applicant of his responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section;

(10) A list of all drugs for which the employer will test, described by brand name or common name, as applicable, as well as by chemical name;

(11) A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the applicable court; and

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(12) A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription or nonprescription medication.

(b) An employer not having a drug-testing program shall ensure that at least sixty (60) days elapse between a general one-time notice to all employees that a drug-testing program is being implemented and the beginning of actual drug testing. An employer having a drug-testing program in place prior to July 1, 1996, is not required to provide a sixty (60) day notice period.

(c) An employer shall include notice of drug testing on vacancy announcements for positions for which drug testing is required. A notice of the employer's drug-testing policy must also be posted in an appropriate and conspicuous location on the employer's premises, and copies of the policy must be made available for inspection by the employees or job applicants of the employer during regular business hours in the employer's personnel office or other suitable locations.

Section 50-__-106.

(a) An employer who establishes a drug-free workplace is required to conduct the following types of drug tests:

(1) Job applicant drug testing. An employer must require job applicants to submit to a drug test and may use a refusal to submit to a drug test or a positive confirmed drug test as a basis for refusing to hire a job applicant. Limited testing of applicants, only if it is based on a

reasonable classification basis, is permissible in accordance with division rule;

(2) Reasonable-suspicion drug testing. An employer must require an employee to submit to reasonable-suspicion drug testing;

(3) Routine fitness-for-duty drug testing. An employer must require an employee to submit to a drug test if the test is conducted as part of a routinely scheduled employee fitness-for-duty medical examination that is part of the employer's established policy or that is scheduled routinely for all members of an employment classification or group;

(4) Follow-up drug testing. If the employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the employer must require the employee to submit to a drug test as a follow-up to such program, unless the employee voluntarily entered the program. In those cases, the employer has the option to not require follow-up testing. If follow-up testing is required, it must be conducted at least once a year for a two (2) year period after completion of the program. Advance notice of a follow-up testing date must not be given to the employee to be tested; and

(5) Post-accident testing. After an accident which results in an injury, if the employer has reason to suspect that the injury was occasioned primarily by the intoxication of the employee or by the use of any drug, as defined in this chapter, which affected the employee to the

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extent that the employee's normal faculties were impaired, the employer may require the employee to submit to a drug test in accordance with procedures adopted by the regulation by the United States department of transportation.

(b) This subsection does not preclude a private employer from conducting random testing, or any other lawful testing, of employees for drugs.

Section 50-__-107. (a) All specimen collection and testing for drugs under this chapter shall be performed in accordance with the procedures provided for by the United States department of transportation rules for workplace drug and alcohol testing compiled at 49 C.F.R., Part 40.

(b) An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer.

(c) An employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by regulations of the United States department of transportation governing drug testing.

(d) An employer shall pay the cost of all drug tests, initial and confirmation, which the employer requires of employees. An employee or job applicant shall pay the costs of any additional drug tests not required by the employer.

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(e) An employer shall not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the employer, for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered a drug rehabilitation program. Unless otherwise provided by a collective bargaining agreement, an employer may select the employee assistance program or drug rehabilitation program if the employer pays the cost of the employee's participation in the program.

(f) If drug testing is conducted based on reasonable suspicion, the employer shall promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing. A copy of this documentation shall be given to the employee upon request and the original documentation shall be kept confidential by the employer pursuant to Section 50-__-109 and shall be retained by the employer for at least one (1) year.

Section 50-__-108.

(a) An employee or job applicant whose drug test result is confirmed as positive in accordance with this section shall not, by virtue of the result alone, be deemed to have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws.

(b) An employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with this section is considered to have discharged, disciplined, or refused to hire for cause.

(c) No physician-patient relationship is created between an employee or job applicant and an employer or any person performing or evaluating a drug test, solely by the establishment, implementation, or administration of a drug-testing program.

(d) Nothing in this section shall be construed to prevent an employer from establishing reasonable work rules related to employee possession, use, sale, or solicitation of drugs, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules.

(e) This section does not operate retroactively, and does not abrogate the right of an employer under state law to conduct drug tests, or implement employee drug-testing programs.

(f) If an employee or job applicant refuses to submit to a drug test, the employer is not barred from discharging or disciplining the employee or from refusing to hire the job applicant, However, this paragraph does not abrogate the rights and remedies of the employee or job applicant as otherwise provided in this section.

(g) This section does not prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of monitoring exposure of employees to toxic

or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or testing is limited to the specific substances expressly identified in the applicable statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests. Such screening or testing need not be in compliance with the rules adopted by the department of labor and department of health. If applicable, random drug testing must be specified in a collective bargaining agreement as negotiated by the appropriate certified bargaining agent before such testing is implemented.

(h) No cause of action shall arise in favor of any person based upon the failure of an employer to establish a program or policy for drug testing.

Section 50-__-109.

(a) All information, interviews, reports, statements, memoranda, and drug test results, written or otherwise, received by the employer through a drug-testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceedings, except in accordance with this section or in determining compensability under this chapter.

(b) Employers, laboratories, medical review officers, employee assistance programs, drug rehabilitation programs, and their agents who receive or have access to information concerning drug test results shall keep all information confidential. Release of such information under any other circumstance is authorized solely pursuant to a written consent form signed voluntarily by the

person tested, unless such release is compelled by a hearing officer or a court of competent jurisdiction pursuant to an appeal taken under this section or is deemed appropriate by a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain, at a minimum:

(1) The name of the person who is authorized to obtain the information;

(2) The purpose of the disclosure;

(3) The precise information to be disclosed;

(4). The duration of the consent; and

(5). The signature of the person authorizing release of the information.

(c) Information on drug test results for tests administered pursuant to this chapter shall not be released or used in any criminal proceeding against the employee or job applicant. Information released contrary to this section is inadmissible as evidence in any such criminal proceeding.

(d) This subsection does not prohibit an employer, agent of an employer, or laboratory conducting a drug test from having access to employee drug test information or using such information when consulting with legal counsel in connection with actions brought under or related to this section or when the information is relevant to its defense in a civil or administrative matter.

Section 50-__-110.

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A laboratory may not analyze initial or confirmation test specimens unless:

(1) The laboratory is licensed and approved by the department of health, using criteria established by the United States department of health and human services as guidelines for modeling the state drug-testing program pursuant to this section or the laboratory is certified by the United States department of health and human services; and

(2) The laboratory complies with any requirement for laboratories used in a workplace drug test program pursuant to 40 C.F.R, Part 40.

Section 50-__-111. (a) The commissioner of labor is authorized to adopt rules, using the rules and guidelines adopted by the department of health and criteria established by the United States department of health and human services and the United States department of transportation as guidelines for modeling the state drug-testing program, concerning, but not limited to:

(1) Standards for licensing drug-testing laboratories and suspension and revocation of such licenses;

(2) Body specimens and minimum specimen amounts that are appropriate for drug testing;

(3) Methods of analysis and procedures to ensure reliable drug-testing results, including standards for initial tests and confirmation tests;

(4) Minimum cut-off detection levels for each drug or metabolites of such drug for the purposes of determining a positive test result;

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(5) Chain-of-custody procedures to ensure proper identification, labeling, and handling of specimens tested; and

(6) Retention, storage, and transportation procedures to ensure reliable results on confirmation tests and retests.

(b) The commissioner of labor is authorized to adopt relevant federal rules concerning drug testing as a minimum standard for testing procedures and protections which the commissioner may exceed. The commissioner is specifically authorized to alter the list of drugs tested for under such federal rules and to set cut-off levels for screening which may vary from the federal rules. All such rules shall be promulgated in accordance with Title 4, Chapter 5.

SECTION 51. Tennessee Code Annotated, Title 50, Chapter 6, Part 4, is amended by adding the following as a new section to be appropriately designated:

Section ___. The department of commerce and insurance shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program pursuant to rules adopted by the division of workers' compensation of the department of labor. The plans must take effect January 1, 1997, must be actuarially sound, and must state the savings anticipated to result from such drug testing. The credit shall be at least five percent (5%) unless the commissioner determines that five percent (5%) is actuarially unsound.

SECTION 52. Tennessee Code Annotated, Section 50-6-504, is amended in subsection (a) by adding the following language at the end of the subsection:

The commissioner shall consider the presence of a drug-free workplace policy pursuant to Section 50 of this act to be a safe employment practice for the purpose of evaluating and awarding grants under this section.

SECTION 53. Tennessee Code Annotated, Title 50, Chapter 6, Part 4, is amended by adding the following as a new section to be appropriately designated:

Section ___. (a) Notwithstanding any other provision of this part or of Title 56 to the contrary, in order to assure that injured employees are treated fairly and to assure that claims are handled in an appropriate and uniform manner, the commissioner of labor is authorized to set standards by rule governing the adjustment and settlement of workers' compensation claims by insurance carriers or self-insured employers. Such standards may include, but are not limited to, standards governing contact with an employee after notice of injury has been given, the processing of claims, and procedures for making an offer of settlement.

(b) The commissioner of labor is authorized to promulgate rules and regulations to effectuate the purposes of this section. All such rules and regulations shall be promulgated in accordance with the provisions of Title 4, Chapter 5.

(c) The commissioner of labor is authorized to enforce standards adopted pursuant to this section in the same manner as and with the same authority as the commissioner of commerce and insurance possesses with respect to violations of this part and Title 56. The commissioner shall also notify the principal corporate office of any insurer of any violations of such standards.

(d) The commissioner shall receive recommendations concerning such standards from the advisory council on workers' compensation. On or before October 1, 1996, the commissioner shall deliver a draft of such standards to the council for comment. The council shall comment on such standards within sixty (60) days.

SECTION 54. Tennessee Code Annotated, Section 50-6-204(d)(5), is amended by designating the existing language as subitem (A) and by adding the following as a new subitem (B):

(B)(i) On July 1, 1997, the commissioner of labor shall initiate a pilot project for the use of independent medical examiners to resolve issues relating to medical impairment in workers' compensation cases in not more than five (5) judicial districts. The pilot project shall continue until July 1, 2002. The commissioner of labor shall report to the advisory council on workers' compensation and the special legislative committee on workers' compensation on or before January 15, 2002, concerning the results of the pilot project. In any workers' compensation case proceeding to trial in a court included in a judicial district within the pilot project, the provisions of this subitem (B) shall govern the resolution of disputes involving whether the employee has reached maximum medical improvement or the degree of medical impairment of the injured employee.

(ii) In judicial districts included within the pilot project, after the filing of pleadings, but no less than thirty (30) days prior to trial, the parties or the court shall determine whether a dispute exists as to the findings of the attending physician. If a dispute exists, then the court and the parties shall proceed in accordance with subitem (B)(iii).

(iii) If either party disputes the determination of such attending physician, a court shall submit such disputed issues to an independent medical examiner certified by the department of labor for resolution. The findings of the independent medical examiner may only be overcome by clear and convincing evidence. If the parties are unable to agree on selection of an independent medical examiner, either party may request the division of workers' compensation to assign a panel of independent medical examiners. The division shall assign a panel of three (3) independent medical examiners and shall provide five (5) days notice to the parties. Each party may strike one (1) name from the assigned panel within three (3) days of receipt of the names of panel members. The injured employee shall select the independent medical examiner from the names remaining on such panel. All costs and fees for an independent medical examiner shall be borne equally among the parties.

(iv) Not later than January 1, 1997, the medical care and cost containment committee shall develop and transmit to the commissioner criteria for the certification of independent medical examiners. Such criteria shall consider the qualifications, training, impartiality, appropriate board or professional certification and specialized training or experience with the workers' compensation system in this state. In developing the criteria, the committee shall consult with the advisory council on workers' compensation and the Tennessee medical association.

(v) The commissioner shall certify as an independent medical examiner any physician who has applied to be designated as an independent medical examiner, who is licensed to practice medicine or surgery pursuant to Title 63, Chapter 6, and who

satisfies the criteria established pursuant to subitem (B)(iv). Any dispute as to whether a physician meets these criteria shall be resolved by the medical care and cost containment committee. After a physician has been designated as an independent medical examiner, any complaint regarding the performance of the duties of an independent medical examiner shall be submitted to the medical care and cost containment committee.

SECTION 55. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the general appropriations act.

SECTION 56. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 57. This act shall take effect on July 1, 1996, except for Sections 14, 17, 22, 23 and 28 through 43 which shall take effect on January 1, 1997, and except for Section 4, which shall take effect on becoming a law, the public welfare requiring it. Sections 14, 17, 22 and 23 shall apply to accidents and injuries occurring on and after January 1, 1997. For the purpose of promulgating any rule authorized by this act, this act shall take effect on becoming a law, the public welfare requiring it.